

REMARKS

Claims 1-9, 11 and 13-25 are currently pending in this application. Claims 1, 2, 6, 8, 15- 20, 23 and 25 have been amended. Applicant has carefully reviewed the Office Action and respectfully requests reconsideration of the claims in view of the remarks presented below.

Claim Objections

Claim 18 was objected to for being unclear. Claim 18 has been amended and is believed to be in clear and proper format.

Claim Rejections Under 35 U.S.C. §102

Claims 1, 2 and 8-9, 11, 13, 19, 20 and 23-25 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,908,392 (Wilson).

Independent claims 1, 23 and 25 relate to methods and systems that only store/record data when it has been determined that a cardiac arrhythmia is likely to arise, thus avoiding unnecessary storing/recording of data, while at the same time ensuring the preservation of data leading up to a cardiac arrhythmia. Such systems and methods are distinct from the prior art, which either do not begin storing/recording data until an actual arrhythmia is detected, or continuously store/record data, regardless of the absence or presence of an arrhythmia. See *e.g.*, paragraphs [0006] and [0007] of specification.

Claim 1 recites a method for controlling the storing and recording of diagnostic data within an implantable medical device having a temporary memory and a long-term memory. The method includes monitoring cardiac rhythm through the implantable medical device; evaluating the cardiac rhythm to determine the likelihood that a cardiac arrhythmia will arise; and controlling the storing and recording of diagnostic data associated with the cardiac rhythm such that no diagnostic data is stored in the temporary memory until it has been determined that a cardiac arrhythmia is likely to arise. Claims 23 and 25 recite similar subject matter.

As a preliminary matter, for the record Applicant does not agree with the Examiner's position that the terms "stored" and "record" are distinct and with the statement that "data stored in temporary buffers cannot be considered to be recorded at all." Applicant submits that data preserved or "collected" in memory – regardless of whether temporary or long term – may be considered to be either stored or recorded in that memory. In other words, stored and recorded are synonymous. This is clear in Wilson itself, which uses the terms interchangeably. For example, compare column 3, line 22 with lines 36 and 38, wherein buffered cardiac event data is described as being stored in one instance (line 22) and as being recorded in another instance (lines 36 and 38). Also, see column 3, line 40, wherein long-term preservation of data is described as being stored. That said, in the interest of advancing this case toward allowance, Applicant's claims now recite that data is not stored until it has been determined that a cardiac arrhythmia is likely to arise.

As stated by the Examiner in the Office Action, Wilson discloses a system that continuously stores data related to cardiac events and waveforms. This data is stored in temporary circular buffers. Depending on trigger criteria, some of the data in the buffers may be recorded into long term memory.

Applicant submits that Wilson fails to disclose the combinations of elements and features recited in independent claims 1, 23 and 25, including storing and recording of diagnostic data associated with a cardiac rhythm such that no diagnostic data is stored in a temporary memory until it has been determined that a cardiac arrhythmia is likely to arise. Accordingly, Applicant requests reconsideration of the §102 rejections of claims 1, 23 and 25.

Applicant further submits that, by virtue of the incorporation of subject matter recited in their respective independent base claim, each of dependent claims 2 and 8-9, 11, 13, 19, 20 and 24 is also novel over Wilson. Aside from the foregoing basis of novelty, Applicant believes that dependent claims recite additional novel subject matter. For example, regarding claim 2, Wilson continuously stores data in a temporary buffer, thus it does not store data in a temporary memory only during periods of time wherein

there is an elevated risk of an arrhythmia. Regarding claim 8, Wilson continuously stores data in a temporary buffer, thus it does not activate storing in a temporary memory only prior to a predicted onset of arrhythmia. Regarding claim 20, Wilson continuously stores data in a temporary buffer, thus it does not disclose activating the storing of diagnostic data in a temporary memory only if a cardiac arrhythmia is likely to arise; and recording data to a long-term memory by transferring data from the temporary memory to the long-term memory if the cardiac arrhythmia actually occurred.

Claim Rejections Under 35 U.S.C. §103

Claims 4, 6, 7 and 15-18 were rejected under 35 U.S.C. §102(b) as anticipated by or, in the alternative, under 35 U.S.C. §103(a) as obvious over Wilson. Claim 14 was rejected under 35 U.S.C. §103(a) as obvious over Wilson. Claims 3 and 5 were rejected under 35 U.S.C. §103(a) as being unpatentable over Wilson in view of U.S. Patent No. 6,400,982 (Sweeney).

In view of the foregoing analysis of independent claim 1 in view of Wilson, Applicant submits that, by virtue of the incorporation of subject matter recited in their independent base claim 1, dependent claims 4, 6, 7 and 14-18 are nonobvious over Wilson, and dependent claims 3 and 5, are nonobvious over Wilson in view of Sweeney.

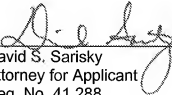
Furthermore, regarding claim 15, Wilson continuously stores data in the buffer, thus Wilson does not confirm that an arrhythmia actually occurred and, if the arrhythmia is not confirmed, deactivate the storing of diagnostic data in the temporary memory. Regarding claim 18, Wilson continuously stores data in the buffer, thus the concept of unnecessary storing of diagnostic data is foreign to Wilson. Accordingly, Wilson does not adaptively modifying parameters employed to evaluate the likelihood of such cardiac arrhythmia so as to reduce unnecessary storing of diagnostic data.

CONCLUSION

Applicant has made an earnest and bona fide effort to clarify the issues before the Examiner and to place this case in condition for allowance. Therefore, allowance of Applicant's claims 1-9, 11 and 13-25 is believed to be in order.

Respectfully submitted,

3 MAY 2007
Date



David S. Sarisky
Attorney for Applicant
Reg. No. 41,288
818-493-3369

CUSTOMER NUMBER: 36802